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Attorneys for Defendant City of San Diego

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

PHIL THALHEIMER; ASSOCIATED BUILDERS & CONTRACTORS PAC  
SPONSORED BY ASSOCIATED BUILDERS & CONTRACTORS, INC. SAN DIEGO CHAPTER;  
LINCOLN CLUB OF SAN DIEGO COUNTY;  
REPUBLICAN PARTY OF SAN DIEGO; and  
JOHN NIENSTEDT, SR.,

Plaintiffs,

v.

CITY OF SAN DIEGO; CITY OF SAN DIEGO ETHICS COMMISSIONERS RICHARD M. VALDEZ, CHAIR, W. LEE BIDDLE, GUILLERMO ("GILL") CABRERA, CLYDE FULLER, DOROTHY LEONARD, and LARRY S. WESTFALL, ALL SUED IN THEIR OFFICIAL CAPACITY; THE HONORABLE JERRY SANDERS, MAYOR OF SAN DIEGO, SUED IN HIS OFFICIAL CAPACITY; JAN GOLDSMITH, CITY ATTORNEY FOR CITY OF SAN DIEGO, SUED IN HIS OFFICIAL CAPACITY; AND ELIZABETH MALAND, CITY CLERK OF SAN DIEGO, SUED IN HER OFFICIAL CAPACITY,

Defendants

**FILE NUMBER: 09CV2862IEG**

**NOTICE OF APPEAL;  
PRELIMINARY INJUNCTION  
APPEAL**

1 Notice is hereby given that Defendant CITY OF SAN DIEGO in the above named case hereby  
2 appeals to the United States Court of Appeals for the Ninth Circuit from the ORDER: (1)  
3 GRANTING THE CITY OF SAN DIEGO'S EX PARTE MOTION FOR CLARIFICATION (Doc.  
4 No. 44); and GRANTING IN PARTY PLAINTIFFS' REQUEST TO PRELIMINARY ENJOIN  
5 ECCO § 27.291, as entered in this action on February 19, 2010.

6  
7 DATED: March 5, 2010

8 **SCHWARTZ SEMERDJIAN HAILE**  
9 **BALLARD & CAULEY LLP**

10 **RICHARD L. HASEN, ESQ.**

11 By: 

12  
13 Dick A. Semerdjian  
14 Attorneys for Defendant  
15 City of San Diego  
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**STATEMENT OF RELATED CASE**

The CITY OF SAN DIEGO has also filed the related Notice of Appeal; Preliminary Injunction Appeal to the United States Court of Appeals for the Ninth Circuit from the ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION, including but not limited to orders that: (1) The City is preliminary enjoined from taking any action to enforce Section 27.2936(b), which requires that money spent by committees to support or oppose a candidate must be attributable to contributions from individuals (not over the \$500 limit); (2) The City is preliminarily enjoined from taking any action to enforce Section 27.2935(a), to the extent it imposes a \$500 limit on contributions to committees making only independent expenditures; (3) The City is preliminarily enjoined from enforcing Section 27.2950, to the extent it prohibits candidates from soliciting and accepting any contribution from political parties; and (4) The City is preliminarily enjoined from enforcing Section 27.2951, to the extent it prohibits candidates from accepting contributions from an account belonging to a political party; as entered in this action on February 16, 2010.

**REPRESENTATION STATEMENT**

Pursuant to Ninth Circuit Rule 3-2(b), Defendant CITY OF SAN DIEGO identifies the following parties<sup>1</sup> to this action, and their counsel of record:

**1. Appellant CITY OF SAN DIEGO**

Dick A. Semerdjian (CA State Bar No. 123630)  
das@sshbclaw.com  
Kristen T. Dalessio (CA State Bar No. 149081)  
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**2. Respondent PHIL THALHEIMER**

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Telephone No. 858 720-1992, Ext. 202  
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Jim Bopp, Jr. (Ind. State Bar No. 2838-84)  
Joe La Rue (Ohio State Bar No. 80643)  
BOPP, COLESON & BOSTROM  
1 South 6<sup>th</sup> Street  
Terre Haute, Indiana 47807  
Telephone: 812 232-2434  
Facsimile: 812235-3685

**3. Respondent ASSOCIATED BUILDERS & CONTRACTORS PAC SPONSORED BY ASSOCIATED BUILDERS & CONTRACTORS, INC. SAN DIEGO CHAPTER**

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San Diego, CA 92130  
Telephone No. 858 720-1992, Ext. 202  
Facsimile 858 720-1990

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<sup>1</sup> All defendants except CITY OF SAN DIEGO were dismissed by stipulation filed on or about January 7, 2010.

1 Jim Bopp, Jr. (Ind. State Bar No. 2838-84)  
Joe La Rue (Ohio State Bar No. 80643)  
2 BOPP, COLESON & BOSTROM  
1 South 6<sup>th</sup> Street  
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Telephone: 812 232-2434  
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5 **4. Respondent LINCOLN CLUB OF SAN DIEGO COUNTY**

6 Gary D. Leasure (CA State Bar No. 211160)  
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7 12625 High Bluff Drive, Suite 103  
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12 Telephone: 812 232-2434  
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13 **5. Respondent REPUBLICAN PARTY OF SAN DIEGO**

14 Gary D. Leasure (CA State Bar No. 211160)  
15 Law Office of Gary D. Leasure, APC  
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17 Facsimile 858 720-1990

18 Jim Bopp, Jr. (Ind. State Bar No. 2838-84)  
Joe La Rue (Ohio State Bar No. 80643)  
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20 Terre Haute, Indiana 47807  
Telephone: 812 232-2434  
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22 **6. Respondent JOHN NIENSTEDT, SR.**

23 Gary D. Leasure (CA State Bar No. 211160)  
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26 ///

27 ///

28 Jim Bopp, Jr. (Ind. State Bar No. 2838-84)

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

PHIL THALHEIMER; ASSOCIATED  
BUILDERS & CONTRACTORS PAC  
SPONSORED BY ASSOCIATED  
BUILDERS & CONTRACTORS, INC.  
SAN DIEGO CHAPTER; LINCOLN CLUB  
OF SAN DIEGO; REPUBLICAN PARTY  
OF SAN DIEGO; and JOHN NIENSTEDT,  
SR.,

Plaintiffs,

vs.

CITY OF SAN DIEGO; City of San Diego  
Ethics Commissioners RICHARD M.  
VALDEZ, Chair, W. LEE BIDDLE,  
GUILLERMO ("GIL") CABRERA, CLYDE  
FULLER, DOROTHY LEONARD, and  
LARRY S. WESTFALL, all sued in their  
official capacity; THE HONORABLE  
JERRY SANDERS, Mayor of San Diego,  
sued in his official capacity; JAN  
GOLDSMITH, City Attorney for the City of  
San Diego, sued in his official capacity; and  
ELIZABETH MALAND, City Clerk of San  
Diego, sued in her official capacity,

Defendants.

**CASE NO: 09-CV-2862-IEG (WMC)**

**ORDER:**

**(1) GRANTING THE CITY OF SAN  
DIEGO'S EX PARTE MOTION FOR  
CLARIFICATION (Doc. No. 44); and**

**(2) GRANTING IN PART  
PLAINTIFFS' REQUEST TO  
PRELIMINARILY ENJOIN ECCO §  
27.2951.**


1 Defendant City of San Diego's ("The City") has filed an ex parte motion for clarification  
2 regarding the Court's February 16, 2010 Order ("the Order") granting in part and denying in part  
3 Plaintiffs' motion for preliminary injunction. Plaintiffs have filed a notice of joinder in the City's ex  
4 parte motion. Specifically, the parties request clarification of the Order with respect to contributions  
5 from non-individual entities (aside from political parties), such as corporations and labor unions, to  
6 independent expenditure committees. The Court GRANTS the motion, and clarifies its Order as  
7 follows.

8 The Order stated: "The City is preliminarily enjoined from taking any action to enforce [San  
9 Diego Municipal Election Campaign Control Ordinance ("ECCO")] Section 27.2936(b), which  
10 requires that money spent by committees to support or oppose a candidate must be attributable to  
11 contributions from individuals (not over the \$500 limit)."<sup>1</sup> (Order at 26:8-10.) The Court clarifies that  
12 the City is preliminarily enjoined from taking any action to enforce Section 27.2936(b), with respect to  
13 contributions from individuals *and non-individual entities* to committees that make only independent  
14 expenditures.

15 In addition, the Court GRANTS IN PART Plaintiffs' request to enjoin Section 27.2951.<sup>2</sup> The  
16 Court ORDERS that the City is preliminarily enjoined from taking any action to enforce Section  
17 27.2951, to the extent that it prohibits *committees making only independent expenditures* from  
18 accepting contributions drawn against a checking account or credit card account belonging to a *non-*  
19 *individual*.

20 **IT IS SO ORDERED.**

21 **DATED: February 19, 2010.**

22   
23 IRMA E. GONZALEZ, Chief Judge  
24 United States District Court

25 <sup>1</sup> ECCO § 27.2936(b) provides: "It is unlawful for any general purpose recipient committee to  
26 use a contribution for the purpose of supporting or opposing a candidate unless the contribution is  
27 attributable to an individual in an amount that does not exceed \$500 per candidate per election."

28 <sup>2</sup> ECCO § 27.2951 provides: "For purposes of supporting or opposing a candidate seeking  
elective City office . . . : (a) It is unlawful for any individual to make, or any committee to accept, a  
contribution drawn against a checking account or credit card account unless such account belongs to  
one or more individuals in their individual capacity."



## Notice of Appeal Notification Form

**To:** Clerk, U.S. Court of Appeals

**Date:** 3/8/2010

**From:** U.S. District Court, Southern District of California

**Subject:** New Appeals Case Information & Docket Fee Notification

### Case Information

Case Title: PHIL THALHEIMER; ASSOCIATED BUILDERS & CONTRACTORS PAC,  
sponsored by Associated Builders & Contractors, Inc. San Diego Chapter; LINCOLN  
CLUB OF SAN DIEGO COUNTY; REPUBLICAN PARTY OF SAN DIEGO; JOHN  
NIENSTEDT, SR. v. CITY OF SAN DIEGO

U.S.D.C. No.: 09-cv-02862-IEG -WMC U.S.D.C. Judge: Irma E. Gonzalez

Complaint/Indictment/Petition Filed: Complaint

Appealed Order Entered: 2/22/2010

Notice of Appeal Filed: 3/5/2010

Court Reporter: Frank Rangus

COA Status: ☐ Granted in full/part (appeal only) ☐ Denied (send clerk's file)

### Docket Fee Notification

Docket Fee: ☒ Paid ☐ Not Paid ☐ No Fee Required

USA/GOVT. APPEAL: ☐ Yes ☒ No

Date F/P granted (Show Date and Attach Copy of Order):

Was F/P Status Revoked? ☐ Yes ☐ No

Companion Case(s): (Please list consolidated cases, if applicable)

### Counsel Information

#### Appellant Counsel:

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Kristen T. Dalessio  
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#### Appellee Counsel:

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James Bopp, Jr.  
Joseph E. LaRue  
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(812) 232-2434

Counsel Status: ☒ Retained ☐ Appointed ☐ Pro Se  
 Appointed \_\_\_\_\_  
 (Attach copy of order/minutes)

### SERVICE LIST

Counsel for Appellant(s) and Appellee(s), as listed on the previous page, have been sent copies of the following items:

x	Transmittal to U.S.C.A. (Appellant and Appellee)
x	Case Information/Docketing Fee Notification Form (Appellant and Appellee)
x	Notice of Appeal with Representation Statement (Appellant, Appellee, U.S. District Judge)
	Docket Entries (Appellant and Appellee)
x	Transcript Designation and Ordering Form (Appellant Only, mailed separately)
	Magistrate Judge's Report and Recommendation
	COA Order
	F/P Order
	Minute Order
x	Other: ORDER (1) Granting The City of San Diego's Ex Parte Motion for Clarification, and (2) Granting Plaintiffs' Request to Preliminary Enjoin ECCO §27.2951, entered 2/22/2010

Form Completed And Documents Served By U.S. District Court Deputy Clerk:

A. Rowland

Deputy's Name

s/ A. Rowland

Deputy's Signature

**UNITED STATES DISTRICT COURT**

Southern District Of California  
Office Of The Clerk  
880 Front Street, Room 4290  
San Diego, California 92101-8900  
Phone: (619) 557-5600  
Fax: (619) 702-9900

W. Samuel Hamrick, Jr.  
Clerk of Court

To: Clerk, U.S. Court of Appeals  
P.O. Box 193939  
San Francisco, CA 94119-3939  
(via electronic transmission)

**Re: USCA No:**  
**USDC No: 09-cv-02862-IEG -WMC**  
**Thalheimer et al v. City of San Diego et al**

Clerk, U.S. Court of Appeals, enclosed herewith you will please find:

x	Notice of Appeal with Representation Statement					
x	Case Information/Docket Fee Payment Notification Form					
	Original Clerk's Record in		set(s) of		volume(s)	
	Reporter's transcripts in		set(s) of		volume(s)	
	Lodgments in		envelope(s)		box(es)	folder(s)
	Judgment Order					
	Magistrate Judge's Report and Recommendation					
	F/P Order					
	COA Order					
x	ORDER (1) Granting The City of San Diego's Ex Parte Motion for Clarification, and (2) Granting Plaintiffs' Request to Preliminary Enjoin ECCO §27.2951, entered 2/22/2010					
x	Please acknowledge receipt					

Sincerely yours,

W. Samuel Hamrick, Jr.  
Clerk of Court

s/ A. Rowland

By: \_\_\_\_\_  
A. Rowland, **Deputy**

Date: 3/8/2010